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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,112	02/17/2004	Allan Rush	P0762.70000US01	6498

7590 11/13/2006

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EXAMINER	
COOLMAN, VAUGHN	

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/780,112	RUSH ET AL.	
	Examiner	Art Unit	
	Vaughn T. Coolman	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 60-69* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 60-69* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 6,712,166 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the '166 patent implies an engine as positively recited in line 2 of applicant's amended claim 1. Furthermore, the narrow recitation of a gearing facility having a first plurality of drive gears attached to the drive shaft for meshing with a second plurality of drive gears attached to a second shaft in claim 11 of the '166 patent anticipates the broader claim limitations found in lines 16-18 of applicant's amended claim 1. The clutch transmitting drive found in claim 11 of

the '166 patent is obviously providing the drive of the driving and retarding modes of claim 1 of patent '166 and disengaging the clutch for neutral mode is identical in scope to disconnecting for neutral mode.

Claim 60 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 12 of U.S. Patent No. 6,712,166 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pair of gears mounted to the drive shaft and the pair of gears mounted to the second shaft for transmitting drive at two different ratios of claim 12 in the '166 patent anticipates the addition of the third and fourth gears of new claim 60. Furthermore, it is obvious from the claims of the '166 patent that when the drive and driven gears are not connected, the neutral mode is provided.

Claims 61 and 62 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 22 of U.S. Patent No. 6,712,166 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim limitations of applicant's new claims 61 and 62 are anticipated by the obvious combination of the limitations of claim 22 of the '166 patent with claim 11 of the '166 patent. It would be obvious to disconnect and operatively isolate via a disengageable coupling the vehicle engine when said engine is being driven by the drive shaft in order to prevent damage to the engine.

Claims 63 and 64 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 22 of U.S. Patent No. 6,712,166 B2 in view of Gray Jr. et al (U.S. Patent No. 5,495,912). Claim 63 recites the disengageable coupling being a clutch. Gray Jr. teaches a disengageable coupling that disconnects an engine (1) of the vehicle from a drive shaft (2) wherein the disengageable coupling is a clutch (8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system shown by the '166 claimed invention with the clutch as taught by Gray Jr., since such a modification would provide the advantage of a conventional mechanism for disengaging an engine from a drive shaft. Gray Jr. also teaches a gear box (3) through which the engine drives the vehicle, with the load removal facility being located between the gear box and the engine (shown in FIG 4).

Claims 65-69 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 12 of U.S. Patent No. 6,712,166 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the narrow recitation of a gearing facility having a first plurality of drive gears attached to the drive shaft for meshing with a second plurality of drive gears attached to a second shaft in claim 11 of the '166 patent and the recitation of providing different gear ratios in claim 12 of the '166 patent anticipates the broader claim limitations found in lines 11-13 of applicant's new claim 65. Claim 66 is identical to claim 1, lines 28-32 in column 19. Claims 67-69 do not recite any new limitations not found in claims 11-13 of the '166 patent.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

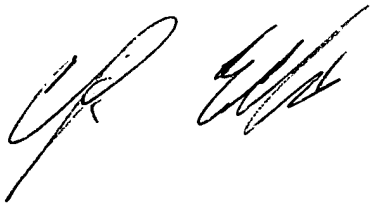
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Travis Coolman
Examiner
Art Unit 3618

vtc



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